

APPEAL NO. 041349
FILED JULY 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 4, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) because the claimant did not sustain a compensable injury, he did not have disability; and (3) the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to Section 409.001. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10); that he gave timely notice of injury to the employer pursuant to Section 409.001; and that he has had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Although another fact finder could have reached a different conclusion on the same evidence, that alone is not a basis on which to disturb the hearing officer's decision. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge